

151 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Arkansas Electric Cooperative Corporation
Mississippi Delta Energy Agency
Clarksdale Public Utilities Commission
Public Service Commission of Yazoo City
Hoosier Energy Rural Electric Cooperative, Inc.

Docket No. EL15-45-000

v.

ALLETE, Inc.
Ameren Illinois Company
Ameren Missouri
Ameren Transmission Company of Illinois
American Transmission Company LLC
Cleco Power LLC
Duke Energy Business Services, LLC
Entergy Arkansas, Inc.
Entergy Gulf States Louisiana, LLC
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.
Indianapolis Power & Light Company
International Transmission Company
ITC Midwest LLC
Michigan Electric Transmission Company, LLC
MidAmerican Energy Company
Montana-Dakota Utilities Co.
Northern Indiana Public Service Company
Northern States Power Company-Minnesota
Northern States Power Company-Wisconsin
Otter Tail Power Company
Southern Indiana Gas & Electric Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING PROCEDURES

(Issued June 18, 2015)

1. On February 12, 2015, pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rules 206 and 212 of the Commission's Rules of Practice and Procedure,² Complainants³ filed a complaint (Complaint) against certain of Midcontinent Independent System Operator, Inc.'s (MISO) transmission-owning members (MISO TOs).⁴ Complainants contend that the current 12.38 percent base return on equity (ROE) earned by MISO TOs, except American Transmission Company (ATC), which has a base ROE of 12.2 percent, through the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) is unjust and unreasonable. Complainants contend that the ROE should be set at no higher than 8.67 percent (a reduction of 371 basis points). In this order, we establish hearing procedures and set a refund effective date of February 12, 2015.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. §§ 385.206 and 385.212 (2014).

³ Complainants for this filing consist of: Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative); Mississippi Delta Energy Agency and its two members, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi; and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Cooperative).

⁴ MISO TOs named in the Complaint are: ALLETE, Inc. (for its operating division Minnesota Power, Inc. and its wholly-owned subsidiary Superior Water Light, & Power Company; Ameren Illinois Company; Union Electric Company (identified as Ameren Missouri); Ameren Transmission Company of Illinois; American Transmission Company LLC (ATC); Cleco Power LLC; Duke Energy Business Services, LLC d/b/a Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission (ITC Transmission), ITC Midwest LLC (ITC Midwest), and Michigan Electric Transmission Company, LLC (METC); MidAmerican Energy Company; Montana-Dakota Utilities Co., Northern Indiana Public Service Company; Northern States Power Company-Minnesota; Northern States Power Company-Wisconsin; Otter Tail Power Company; and Southern Indiana Gas & Electric Company d/b/a Vectran Energy Delivery of Indiana, Inc.

I. Background

2. On December 3, 2001, MISO filed proposed changes to its Tariff to, among other things, increase the base ROE received by MISO transmission owners from 10.5 percent to 13 percent for all MISO pricing zones, except for the ATC transmission zone. The Commission set the ROE for hearing.⁵ On September 23, 2003, the Commission affirmed the Initial Decision,⁶ which approved a base ROE of 12.38 percent for the MISO transmission owners, but the Commission modified the Initial Decision to include an upward adjustment of 50 basis points for turning over operational control of transmission facilities.⁷ On remand from the U.S. Court of Appeals for the District of Columbia Circuit, the Commission re-affirmed its decision to use the midpoint approach for calculating the ROE for MISO transmission owners.⁸ Also on remand, the Commission vacated its prior order concerning the 50 basis point adder and stated that the MISO transmission owners may make filings under section 205 of the FPA to include an incentive adder.⁹ The 12.38 percent base ROE continues to be the applicable ROE under Attachment O of the MISO Tariff used by all MISO transmission owners except for ATC. ATC's base ROE of 12.2 percent was established as part of a settlement agreement that was filed with the Commission on March 26, 2004.¹⁰

3. On June 19, 2014, the Commission issued Opinion No. 531, in which the Commission changed its approach on the discounted cash flow (DCF) methodology to be applied in public utility rate cases, by adopting the two-step DCF methodology in place of the one-step DCF methodology the Commission had historically used.¹¹ The

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 98 FERC ¶ 61,064, *reh'g denied*, 98 FERC ¶ 61,356 (2002).

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 99 FERC ¶ 63,011 (2002).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292, *order denying reh'g*, 102 FERC ¶ 61,143 (2003).

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302 (2004).

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,355 (2005).

¹⁰ In Docket No. ER04-108-000, the Commission approved the uncontested Settlement. *Am. Transmission Co. LLC and Midwest Indep. Transmission Sys. Operator, Inc.*, 107 FERC ¶ 61,117 (2004).

¹¹ *See generally Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*,

(continued ...)

Commission explained that the two-step DCF formula is $k = D/P (1 + .5g) + g$, where “D/P,” the dividend yield, is calculated using a single, average dividend yield based on the indicated dividend and the average monthly high and low stock prices over a six-month period; and “g,” the constant dividend growth rate, is calculated by averaging short-term and long-term growth estimates, with the short-term estimate receiving two-thirds weight and the long-term estimate receiving one-third weight.¹²

4. The Commission, after finding that there should be only one base ROE applicable to both the refund period and the prospective period, then applied the two-step DCF methodology, using a national proxy group of companies the Commission found were of comparable risk to the New England Transmission Owners (NETOs), to determine the NETOs’ base ROE; however, because the parties had not litigated one input to the two-step DCF methodology—i.e., the appropriate long-term growth projection—the Commission instituted a paper hearing on that narrow issue. The Commission also found that, due to the anomalous capital market conditions reflected in the record of that proceeding, mechanically applying the DCF methodology and placing the NETOs’ base ROE at the midpoint of the zone of reasonableness produced by that methodology would not satisfy the requirements of *Hope* and *Bluefield*.¹³ Therefore, the Commission found it appropriate, based on the record evidence in the proceeding, to place the NETOs’ base ROE halfway between the midpoint of the zone of reasonableness and the top of that zone.¹⁴ However, the Commission explained that its finding on the specific numerical just and reasonable ROE for the NETOs was subject to the outcome of the paper hearing on the appropriate long-term growth projection to be used in the two-step DCF methodology.¹⁵ The Commission also explained that, according to Commission precedent, “when a public utility’s ROE is changed, either under section 205 or section 206 of the FPA, that utility’s total ROE, inclusive of transmission incentive ROE

Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A), *order on reh’g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) (Opinion No. 531-B).

¹² Opinion No. 531, 147 FERC ¶ 61,234 at PP 15, 17, 39.

¹³ *Id.* P 142 (citing *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923) (*Bluefield*); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope*)).

¹⁴ *Id.*

¹⁵ *Id.*

adders, should not exceed the top of the zone of reasonableness produced by the two-step DCF methodology.”¹⁶

5. On October 16, 2014, the Commission granted in part, denied in part and dismissed in part a complaint filed by ABATE Complainants¹⁷ (ABATE Complaint) against MISO and MISO TOs in Docket No. EL14-12-000.¹⁸ Like the Complainants in this proceeding, the ABATE Complainants contended that the current 12.38 percent base ROE earned by MISO TOs, except ATC, which has a base ROE of 12.2 percent, through the MISO Tariff is unjust and unreasonable.¹⁹ ABATE Complainants contended that the ROE should be set at 9.15 percent (a reduction of 323 basis points). Additionally, ABATE Complainants argued that the capital structures of certain MISO TOs feature unreasonably high amounts of common equity such that they are unjust and unreasonable and that MISO TOs’ capital structures should be capped at 50 percent common equity.²⁰ Finally, ABATE Complainants contended that the ROE incentive adders received by ITC Transmission for being a member of a regional transmission organization (RTO) and by both ITC Transmission and METC for being independent transmission owners are unjust and unreasonable and should be eliminated.²¹ The Commission granted the ABATE Complaint with respect to the base ROE element and established hearing and settlement judge procedures and set a refund effective date of November 12, 2013.²² The Commission noted that it expected the hearing and settlement participants’ evidence and DCF analyses to be guided by its decision in Opinion No. 531. However, the

¹⁶ *Id.* P 165.

¹⁷ ABATE Complainants, a group of large industrial customers, are: Association of Businesses Advocating Tariff Equity (ABATE); Coalition of MISO Transmission Customers (Coalition of MISO Customers); Illinois Industrial Energy Consumers; Indiana Industrial Energy Consumers, Inc.; Minnesota Large Industrial Group; and Wisconsin Industrial Energy Group.

¹⁸ MISO TOs named in the ABATE Complaint are the same as those named in this proceeding. *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at n.4 (2014) (ABATE Complaint Order).

¹⁹ *Id.* PP 5-11.

²⁰ *Id.* PP 12-17.

²¹ *Id.* PP 18-22.

²² *Id.* PP 183-189.

Commission denied the ABATE Complaint with respect to the transmission incentive and capital structure elements.²³

II. Complaint

6. Complainants assert that the current 12.38 percent base ROEs of MISO TOs and 12.2 percent base ROE of ATC are no longer just and reasonable and should be adjusted to a just and reasonable ROE of no higher than 8.67 percent.²⁴ Complainants explain that, until recently, under Commission precedent, when a complainant challenged a previously approved rate under section 206 of the FPA and proposed a new one, the Commission needed to find that (1) the existing rate was unjust and unreasonable; and (2) a proposed replacement rate was just and reasonable.²⁵ However, Complainants further state that, as recently held by the United States Court of Appeals for the District of Columbia, under FPA section 206, a complainant need only demonstrate that the existing rate is unjust and unreasonable; it is the Commission's responsibility to determine a new just and reasonable rate.²⁶

7. To support their claim that the current base ROE is no longer just and reasonable, Complainants filed an affidavit of J. Bertram Solomon, Executive Consultant of GDS Associates, Inc., an engineering and consulting firm. Mr. Solomon performed a two-step, constant growth DCF analysis in accordance with the Commission's guidance for electric utilities in Opinion Nos. 531 and 531-A, as well as other Commission precedent.²⁷ Complainants explain that the DCF analysis employed a national proxy group of Value Line Investment Survey (Value Line) electric utilities with average risk comparable to

²³ *Id.* PP 190-205. The Commission also dismissed in part the ABATE Complaint as it related to MISO. *Id.* P 180.

²⁴ Complainants note that Arkansas Electric Cooperative and Hoosier Cooperative are both non-jurisdictional transmission-owning members of MISO and that they "commit to changing their ROEs to whatever the outcome of this proceeding is." Complaint at 7 n.1.

²⁵ *Id.* at 13 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,003, at P 28 (2010); *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002), *accord Cities of Bethany v. FERC*, 727 F.2d 1131, 1143-44 (D.C. Cir. 1984); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 353 (1956)).

²⁶ *Id.*

²⁷ *Id.* at 14.

that of MISO TOs. Complainants state that Mr. Solomon selected a national electric utility proxy group using the following criteria: (1) companies that are included in the Value Line electric utility industry universe; (2) electric utilities that have a Standard & Poor's (S&P) corporate credit rating of BBB- to AA+ and a Moody's long-term issuer or senior unsecured credit rating of Baa3 to Aa2, which are ratings ranges one credit rating notch above and below the MISO TO range;²⁸ (3) electric utilities having an Institutional Brokers Estimate System (IBES) published analysts' consensus "five-year" earnings per share growth rate; (4) electric utilities that are not engaged in major merger or acquisition (M&A) activity currently or during the six-month dividend yield analysis period; (5) electric utilities that have paid dividends throughout the six-month dividend yield analysis period, did not cut dividends during that period, and have not subsequently announced a dividend cut; and (6) electric utilities whose DCF results pass threshold tests of economic logic and are not outliers.²⁹ Nine companies were eliminated from the proxy group due to major M&A activity during the dividend yield analysis period and/or ongoing major M&A activity and one company was eliminated for not having an S&P or Moody's rating.³⁰

8. Complainants state that, consistent with the Commission's two-step constant growth DCF method set forth in Opinion No. 531, Mr. Solomon's DCF analysis, using his national proxy group, produced a zone of reasonableness with a range of investor-required ROEs of 2.84 percent to 11.40 percent, with a median of the full array of results of 8.61 percent and a midpoint of 7.12 percent.³¹ According to Complainants, excluding outliers, Mr. Solomon's national proxy group produced a zone of reasonableness of 5.81 percent to 11.40 percent. Complainants state that Mr. Solomon recommended the median value of 8.67 percent as the just and reasonable ROE for MISO TOs.

9. Complainants contend that certain anomalous market conditions that the Commission cited in Opinion No. 531 as contributing to its determination to set the ROE halfway between the midpoint of the zone of reasonableness and the top of the zone are no longer present.³² Specifically, Complainants point to the current six-month average yield on 10-year U.S. Treasury bonds (2.28 percent versus a historically low bond yield

²⁸ *Id.* at 17-18 (citing Testimony of J. Bertram Solomon (Solomon Test.) at 16-17).

²⁹ *Id.*

³⁰ *Id.* at 18 (citing Solomon Test. at 18).

³¹ *Id.* at 19.

³² *Id.* at 21-22 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 145 n.285).

of below 2.0 percent in 2013), lower unemployment, and the Federal Reserve's ending of its quantitative easing initiative, among other factors, indicate that capital market conditions are no longer anomalous. Complainants also state that Mr. Solomon evaluated bond yields in the 42-month period ending January 2015, which demonstrated that the most recent period is not anomalous, but rather is consistent with average yields over the past three and a half years. Further, Complainants state that Mr. Solomon found that state-allowed ROEs have also fallen from an average of 10.01 percent in 2012 to 9.8 percent in 2013 to 9.76 percent in 2014.³³ Complainants add that retail service regulated by the state commissions includes the generation function and is more risky than Commission-regulated transmission service, especially where transmission utilities have formula rates, as do the MISO TOs, providing for timely recovery of their actual costs, contrasting with the regulatory lag present in many state proceedings. Additionally, Complainants point out that Mr. Solomon testifies that discredited alternative ROE benchmarks to the DCF do not provide a basis for moving the ROE above the median of the zone of reasonableness.³⁴

10. Complainants also argue that, even if setting the ROE at central tendency of the upper half of the zone of reasonableness were justified, the record shows, and past precedent supports, the appropriateness of using the median, rather than the midpoint, of the upper half of the array of ROEs.

11. Complainants acknowledge that section 206 of the FPA generally limits refunds to a 15-month period and that the Commission has rejected "end runs" around the FPA when a complainant has alleged identical violations of the FPA based on identical facts in serial complaints solely to extend the refund-effective date. However, Complainants assert that the Commission's precedent permits new ROE complaints when a complainant has submitted new facts and sought a new refund effective date.³⁵ Thus, Complainants argue that the Commission should establish the filing date of the Complaint as the refund effective date.

³³ *Id.* at 21-23 (citing Ex. No. JCC-1 at 31:15 – 32:2 (citing reports from Regulatory Research Associates detailing major rate case decisions from 2013 and 2014; Ex. No. JCC-3 at 248; Ex. No. JCC-3 at 257, 261, 262)).

³⁴ *Id.* at 24 (citing Ex. No. JCC-1 at 33:26-31).

³⁵ *Id.* at 26-27 (citing *Southern Co. Servs., Inc.*, 68 FERC ¶ 61,231 (1994) (*Southern Co. I*), order on reh'g, 83 FERC ¶ 61,079, at 61,385-86 (1998) (*Southern Co. II*)).

12. Complainants request that the Commission consolidate the Complaint proceeding in this docket with the ongoing ABATE Complaint proceeding. Complainants state that the two proceedings address the same issue – i.e., establishing a just and reasonable MISO-wide base ROE – and consolidating the instant Complaint with the ABATE Complaint proceeding is the most efficient way for the Commission to proceed with resolving both complaints. Further, Complainants assert that consolidating the two dockets will avoid the potential for duplicative discovery and will allow the parties to the two proceedings to more effectively utilize their resources in addressing common issues. The Complainants state that the Commission has recently consolidated complaints filed under similar circumstances where there is the existence of common issues of law and fact.³⁶

13. Further, Complainants request fast track processing for the Complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, given the motion to consolidate and because the hearing on the ABATE Complaint is scheduled for August 2015. Moreover, Complainants explain that settlement conferences already began in the ABATE Complaint proceeding and that on December 16, 2014, settlement discussions broke down. Complainants state that the Settlement Judge declared an impasse and recommended that settlement procedures be terminated, and the Chief Judge thereafter issued an order terminating settlement judge procedures and designated a judge to preside over the evidentiary hearing to be held in the ABATE Complaint proceeding.³⁷ Accordingly, because the parties in the ABATE Complaint proceeding recently engaged in settlement discussions and were unable to come to an agreement as to the appropriate MISO-wide base ROE, Complainants request that the Commission forego its standard practice of ordering an evidentiary hearing, but holding the hearing in abeyance to provide time for settlement judge procedures, and instead allow the parties to proceed directly to hearing. Complainants state they have no reason to believe that additional discussions would be productive at this time and would only delay a final resolution in this proceeding.³⁸

³⁶ *Id.* at 28 (citing *Seminole Elec. Coop., Inc. v. Duke Energy Florida, Inc.*, 149 FERC ¶ 61,210, at P 29 (2014); *Golden Spread Elec. Coop., Inc. v. Southwestern Pub. Serv. Co.*, 147 FERC ¶ 61,239, at P 25 (2014)).

³⁷ *Id.* at 12-13.

³⁸ *Id.* at 29 (citing Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge and Establishing Track II Procedural Time Standards, Docket No. EL14-12-000 (filed Jan. 5, 2015)).

III. Notice and Responsive Pleadings

14. Notice of the Complaint was published in the Federal Register, 80 *Fed. Reg.* 9709 (2015), with protests and interventions due on or before March 4, 2015. On February 20, 2015, MISO TOs filed a motion for an extension of time in this proceeding for filing answers, interventions, or comments up to and including March 11, 2015. The period for answers, interventions, or comments regarding this filing was subsequently extended to March 11, 2015.

15. The entities that filed notices of intervention, motions to intervene, protests, comments, and answers are listed in the Appendix to this order. The entity abbreviations listed in the Appendix will be used throughout this order.

16. Numerous parties provide comments supporting the Complaint, in varying degrees, with respect to the ROE. South Mississippi Electric states it fully supports the Complaint.³⁹

17. Iowa Group contends that the Commission's ratemaking standards require protection of consumers from exorbitant rates while fairly compensating utility investors. Further, Iowa Group asserts that the Commission does not need to find that an existing return is completely outside the zone of reasonableness that was used in its initial setting, but rather it is up to the Commission to make its own assessment on the circumstances before it.⁴⁰ Regarding the Complainants' two-step DCF analysis in response to the Commission's modified DCF model, Iowa Group asserts that the Complainants' analysis is echoed in its own two-step DCF analysis.⁴¹ Iowa Group's DCF analysis determined the zone of reasonableness to be 5.78 percent to 11.37 percent, with a midpoint of the zone to be 8.58 percent. Iowa Group contends that its analysis demonstrates that, as a result of significantly changed conditions in the financial markets since 2000, MISO TOs' current base ROE is excessive and results in unjust and unreasonable rates. Iowa Group states that MISO TOs' base ROE and capital structure have upset the balance between investor and consumer interests. Accordingly, Iowa Group states it strongly supports the Complaint.⁴²

³⁹ South Mississippi Electric Comments at 6.

⁴⁰ Iowa Group Comments at 5-8 (citing *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,038, at P 11 (2008) (*Bangor Hydro*)).

⁴¹ *Id.* at 8-12.

⁴² *Id.* at 12 (citing Testimony of David C. Parcell at 18).

18. ABATE Complainants support the Complaint and agree that MISO TOs' existing ROEs are excessive, unjust, and unreasonable. ABATE Complainants submit their two-step DCF analysis and recommend a base ROE for MISO TOs of 9.54 percent for MISO TOs that have a common equity ratio of 55 percent or less.⁴³

19. Further, ABATE Complainants support the Complainants' request for consolidation because the two proceedings address the same issue—i.e., determining whether the current ROE is no longer just and reasonable and, if not, establishing a just and reasonable ROE. ABATE Complainants also support the request for fast track processing because the ABATE Complaint proceeding has already moved into the hearing phase and they argue that expedited treatment will allow the consolidated proceedings to move forward and achieve greater administrative efficiency.⁴⁴

20. MISO TOs argue that Complainants have not made a prima facie case that MISO TOs' base ROE is unjust and unreasonable. In this regard, MISO TOs aver that Complainants bear the burden to establish by substantial evidence that the present base ROE is unjust and unreasonable.⁴⁵

21. MISO TOs argue that flaws and omissions in Mr. Solomon's DCF analysis and testimony render the Complaint deficient. First, MISO TOs contend that Mr. Solomon's DCF analysis contains an inherent downward bias due to his unjustified failure to exclude illogical low-end DCF values. MISO TOs argue that Mr. Solomon's low-end outlier test is based on mechanically adding 100 basis points to a historical yield on triple-B rated public utility bonds, which is counter to the widely accepted, inverse relationship between equity risk premiums and interest rates and to the well-established principle that equity risk premiums are higher when interest rates are very low.⁴⁶ According to MISO TOs, Mr. Solomon's mechanical approach, when applied in the context of anomalously low interest rates, has the effect of retaining low-end DCF

⁴³ ABATE Complainants Answer at 4.

⁴⁴ *Id.* at 15-16.

⁴⁵ MISO TOs Answer at 8 (citing, *e.g.*, *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161, at P 9 (2008)).

⁴⁶ *Id.* at 8-9 (citing Testimony of Adrien M. McKenzie (McKenzie Test.) at 30-33).

estimates that are far below what equity investors require in order to be compensated for the risk associated with electric transmission investment.⁴⁷

22. Second, MISO TOs criticize Mr. Solomon's exclusive reliance on IBES growth data, without acknowledging the availability of equally reliable and widely used Value Line growth estimates. MISO TOs assert that, at a minimum, Mr. Solomon should have run his DCF model twice, using both IBES and Value Line estimates, in order to inform his DCF results and provide another analytical tool to aid the Commission in determining whether his "mechanical application of the DCF methodology . . . result[s] in an ROE that does not satisfy the requirements of *Hope* and *Bluefield*.'"⁴⁸

23. Third, MISO TOs question Mr. Solomon's DCF analysis for failing to consider any other cost of capital models, and for failing to compare the results of other models with his DCF results. MISO TOs argue that such failure is irreconcilable with the Commission's finding in Opinion No. 531 that the *Hope* and *Bluefield* capital attraction standard requires evaluation of alternative benchmark methodologies as a check on DCF results, given the unusual capital market conditions identified in the record.⁴⁹ They argue that, had Mr. Solomon compared his DCF ROE estimates with estimates producing using the Capital Asset Pricing Model (CAPM), the Empirical Capital Asset Pricing Model (ECAPM), and/or an expected earnings analysis, Mr. Solomon would have found that significant discrepancies continue today and entirely undercut his proposal to reduce the base ROE by over 350 basis points.

24. MISO TOs also argue that Complainants' analysis advances sweeping conclusions that do not follow from the facts. As an example, MISO TOs assert that Mr. Solomon's testimony regarding the relatively low cost of capital, which he bases on a 2002 to 2015 comparison of average utility bond yields, overlooks the artificially low interest rates in the wake of the global recession. Further, MISO TOs argue that Mr. Solomon testifies that his proposed ROE would reduce the annual transmission revenue requirements by nearly \$500 million but he makes no attempt to analyze what the consequences would be on future infrastructure investment, and/or the ability of

⁴⁷ *Id.* at 9 (citing McKenzie Test. at 32).

⁴⁸ *Id.* at 9-10 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 102; *ISO New England, Inc.*, 109 FERC ¶ 61,147, at P 25 (2004), *aff'd*, *Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278 (D.C. Cir. 2006); Solomon Test. at 33).

⁴⁹ *Id.* at 10 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 145).

MISO TOs to attract capital for future system expansions and upgrades, including projects to meet various regulatory and legislative initiatives.⁵⁰

25. MISO TOs also argue that Mr. Solomon's own evidence confirms that his recommended ROE cannot be justified when compared to prevailing ROEs being approved in state regulatory proceedings. MISO TOs assert that the low end of the range of allowed state returns cited by Mr. Solomon exceeds by 50 basis points the ROE Mr. Solomon claims is just and reasonable for MISO TOs. Further, MISO TOs and Xcel contend that his recommended base ROE is below state-approved ROEs in the nation.⁵¹ Moreover, they claim he provides no support for his contention that state-regulated retail service is more risky than the Commission-regulated transmission service provided by MISO TOs, even though they note that the Commission reached the opposite conclusion in Opinion No. 531.⁵²

26. MISO TOs also criticize Complainants' approach in concluding that the existing base ROE is unjust or unreasonable. MISO TOs argue that the Commission must ensure that the economic interests of the utility are considered, consistent with *Hope* and *Bluefield*, through flexibly applying its approach to determining a just and reasonable ROE for MISO TOs, and not through Mr. Solomon's flawed DCF analysis on its own. Further, MISO TOs and Xcel argue that the anomalous capital conditions cited by the Commission in Opinion No. 531 have not materially changed and, as a result, Mr. Solomon's mechanical DCF analysis does not adequately reflect a return sufficient to compensate for the investment and business risks facing equity investors in capital-intensive investments such as electric transmission facilities.⁵³

27. MISO TOs also argue that Mr. Solomon's application of the DCF methodology and implementation of Opinion No. 531 in his analysis is flawed. MISO TOs argue that Mr. Solomon's elimination of only the low-end DCF estimates that are within approximately 100 basis points of average public utility bond yields results in the retention of unrepresentative returns that unreasonably skew the low end of the overall

⁵⁰ *Id.* at 11-12.

⁵¹ *Id.* at 12; Xcel Answer at 17.

⁵² MISO TOs Answer at 12 (citing Solomon Test. at 31-34; McKenzie Test. at 15; Opinion No. 531, 147 FERC ¶ 61,234 at P 149; Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 84-85).

⁵³ *Id.* at 13-16, 22-23 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 145; McKenzie Test. at 20-24); Xcel Answer at 15-16, 19.

DCF range and lower the midpoint of that range. In addition, they argue that Mr. Solomon's exclusive reliance on IBES growth rate estimates produces an unreasonably low range of ROE estimates and correspondingly low midpoint and median values for his DCF range. MISO TOs assert that the results of their DCF methodology using Value Line short-term growth rates are consistent with the Commission's determination in Opinion No. 531. Using such an approach, MISO TOs argue that the DCF results produced a range of 6.58 percent to 16.25 percent in which to evaluate investors' required ROE for MISO TOs.⁵⁴

28. MISO TOs assert that, using several "benchmark" ROE analyses to assess whether the current base ROE remains within a properly derived zone of reasonableness, the current base ROE remains just and reasonable.⁵⁵

29. MISO TOs contend that other costs associated with raising capital through the sale of equity securities, which include legal, accounting, printing, and brokerage costs, are not accounted for in the DCF or other models, but deserve consideration.⁵⁶

30. MISO TOs further argue that Complainants ignore the significant consumer benefits that are supported by the base ROE and approved incentives.⁵⁷ Moreover, MISO TOs argue that the need for transmission investment is far from over. MISO TOs contend that granting the Complaint would undermine the ability of MISO TOs to meet future demands and federal regulatory requirements while safeguarding reliability of the grid.⁵⁸

31. MISO TOs argue that the Commission should deny the Complaint in its entirety because the base ROE is within the zone of reasonableness and cannot, as a matter of

⁵⁴ MISO TOs Answer at 17-21 (citing McKenzie Test. at 15, 34-38, 40-41; Opinion No. 531, 147 FERC ¶ 61,234 at P 90).

⁵⁵ *Id.* at 24-27 (evaluating the results of the DCF study using CAPM, ECAPM, projected utility bond yields, expected earnings, and non-utility DCF models).

⁵⁶ *Id.* at 27.

⁵⁷ *Id.* at 28-34.

⁵⁸ *Id.* at 34-41 (describing discussions related to the United States Environmental Protection Agency's Clean Power Plan and Mercury and Air Toxics Standards).

law, be unjust and unreasonable.⁵⁹ According to MISO TOs, the FPA provides that the Commission “may only set aside a rate that is outside the zone of reasonableness, bounded on one end by investor interest and the other by the public interest against excessive rates,”⁶⁰ although MISO TOs recognize that the Commission in *Bangor Hydro-Electric Co.* held that an ROE within the zone of reasonableness still may be unjust and unreasonable.⁶¹ However, MISO TOs argue that the *Bangor Hydro* finding is erroneous in the section 206 context and that continued application of that finding here would create rate instability and an environment of regulatory uncertainty.⁶²

32. MISO TOs and Xcel argue that the Complaint violates section 206 of the FPA by seeking to extend the 15-month refund period established in the ABATE Complaint proceeding. MISO TOs argue that all of the Complainants are parties to the ABATE Complaint proceeding and have had and will have ample opportunity to submit new or updated facts and testimony regarding the MISO TOs’ base ROE in that case. Xcel argues that the Complainants’ “new analysis” in support of a second complaint on the base ROE has actually been provided in the ABATE Complaint proceeding.⁶³ Therefore, they argue that this Complaint is not necessary to provide an opportunity for Complainants to challenge the base ROE because that opportunity exists in the ABATE Complaint proceeding. Further, MISO TOs argue that, under FPA section 206, the refund potential is limited to a single 15-month period. According to MISO TOs and Xcel, accepting the Complaint here would circumvent section 206’s refund period limitation and the intent behind it. MISO TOs argue that the Commission has

⁵⁹ *Id.* at 42. (citing *Montana-Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 251 (1951); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Markets Operated by Cal. Indep. Sys. Operator & Cal. Power Exch.*, 97 FERC ¶ 61,275, at 62,218 (2001); *S. Cal. Edison Co.*, 139 FERC ¶ 61,042, at P 65 (2012), *reh’g denied*, 144 FERC ¶ 61,145 (2013)).

⁶⁰ *Id.* (citing *Pac. Gas. & Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002)).

⁶¹ *Id.* at 43 & n.129 (citing *Bangor Hydro*, 122 FERC ¶ 61,038 at PP 10-11; *see also* Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 32-33).

⁶² *Id.* at 43-44.

⁶³ Xcel Answer at 9, 11-12.

disallowed successive complaints when the sole purpose is to extend the statutorily limited 15-month refund period.⁶⁴

33. MISO TOs assert that, if the Commission does not dismiss the Complaint, it should set the latest possible refund effective date of July 12, 2015, or five months after the Complaint's filing, because the existing base ROE was approved by the Commission and has been used by MISO TOs for years. Further, MISO TOs argue that the base ROE has helped to support substantial, ongoing transmission investment in the MISO grid and provided net benefits to consumers. Moreover, MISO TOs contend that Complainants have not made the requisite showing that fast track processing is appropriate.⁶⁵ Lastly, MISO TOs and Xcel argue that the Commission should deny Complainants' request to consolidate the Complaint with the ABATE Complaint proceeding, or to consider them on separate procedural tracks, because Commission policy is to consolidate proceedings where there are common issues of law or fact and consolidation will ultimately result in greater administrative efficiency.⁶⁶ MISO TOs and Xcel argue that there are no common issues of law or fact among the Complaint and the ABATE Complaint because the Commission treats each successive ROE complaint as an independent claim from prior ROE complaints, the adjudication of which would require evaluation of risk, capital market conditions, or other variables over different time periods. Therefore, they argue that consolidation of the two complaints would not serve the goals of administrative efficiency and would instead unduly delay the resolution of the ABATE Complaint proceeding. MISO TOs point to a recent ROE proceeding where the Commission left

⁶⁴ MISO TOs Answer at 44-45 (citing *Allegheny Elec. Coop., Inc. v. Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096, at 61,349 (1992) (*Niagara Mohawk*); cf. *Southern Co. II*, 83 FERC ¶ 61,079 at 61,386; *Consumer Advocate Div. of the Pub. Serv. Comm'n of W. Va. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (*Consumer Advocate I*), *order on reh'g*, 68 FERC ¶ 61,207 (1994) (*Consumer Advocate II*)).

⁶⁵ *Id.* at 47-48 (citing *Complaint Procedures*, Order No. 602, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,071, at 30,766, *order on reh'g*, Order No. 602-A, 1996-2000 FERC Stats. & Regs., Regs. Preamble ¶ 31,076, *order on reh'g*, Order No. 602-B, 1996-2000 FERC Stats. & Regs., Regs. Preamble ¶ 31,083 (1999); *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,185, at PP 12-13 (2011)).

⁶⁶ *Id.* at 48-49 (citing *Empire Dist. Elec. Co.*, 133 FERC ¶ 61,004, at P 15 (2010); *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 26 (2008)); Xcel Answer at 29.

the decision of consolidation to the Chief Administrative Law Judge, who denied it, and they argue that the Commission should do the same here.⁶⁷

34. Xcel asserts that the Commission's policy in section 205 filings is to require that a non-jurisdictional TO provide a voluntary commitment of refunds, including interest, in the event that the Commission determines that the rates are unjust and unreasonable, and if the non-jurisdictional TO does not provide the voluntary commitment of refunds, it is not permitted to receive any revenues from the rates under review until the Commission makes a final determination on the justness and reasonableness of the rates.⁶⁸ Xcel notes that, while the Complainants' rate proposal is under section 206 of the FPA and not section 205, Arkansas Electric Cooperative and Hoosier Cooperative are non-jurisdictional TOs and would not be subject to any refund obligations in the event that the Commission set the Complaint for hearing and established a refund effective date of February 12, 2015. Xcel notes that Arkansas Electric Cooperative and Hoosier Cooperative do not expressly offer to lower their existing base ROE as of the refund effective date to 8.67 percent, but rather "commit to changing their ROEs to whatever the outcome of [the Complaint] proceeding is."⁶⁹ Accordingly, Xcel argues that, if the Commission does not dismiss the Complaint, the Commission must require Arkansas Electric Cooperative and Hoosier Cooperative to provide a voluntary commitment that they will provide refunds between the base ROE they currently collect and any reduction to the base ROE ordered by the Commission, effective as of the same refund effective date established by the Commission.

35. Xcel also argues that, if the Commission determines that the MISO base ROE of 12.38 percent may be unjust and unreasonable, the Commission should institute a section 206 proceeding on its own motion into the base ROE collected by non-jurisdictional TOs in MISO.⁷⁰ If further proceedings are warranted, then the Commission should require MISO to make a compliance filing that either (1) includes voluntary commitments of refunds by such non-jurisdictional TOs to refund the

⁶⁷ MISO TOs Answer at 50-51 (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 150 FERC ¶ 63,003, at P 4 (2015)).

⁶⁸ Xcel Answer at 21-22 (citing *Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 47 & n.59 (2012); *see also City of Riverside, California*, 128 FERC ¶ 61,207, at P 26 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at P 70 & n.92 (2011)).

⁶⁹ *Id.* at 21 (citing Complaint at 7 n.1).

⁷⁰ *Id.* at 24-26 (citing *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,135 (2013)).

difference between the base ROE and any reduced base ROE ultimately determined by the Commission to be just and reasonable on the same effective date established by the Commission in the Complaint; or (2) removes from the MISO Tariff the tariff sheets containing the non-jurisdictional TOs' annual transmission revenue requirements that contain the 12.38 percent ROE for any non-jurisdictional TO not making such a voluntary commitment.⁷¹

36. Complainants disagree with MISO TOs' and Xcel's contention that their complaint should be rejected as a successive complaint intended solely to extend the 15-month refund period. They contend that the Commission has allowed multiple complaints where the complainant has provided new facts and sought a new refund-effective date, and has found so specifically for ROE complaints.⁷² Additionally, according to Complainants, the Commission has explicitly rejected challenges to successive complaints in the context of FPA section 206 complaint proceedings against ROEs of public utility transmission owners when presented with new analysis.⁷³ They also disagree with Xcel's contention that the Complaint should be rejected because the same analysis was provided in the ABATE Complaint proceeding. Complainants point out that the filing parties in the two proceedings are different, as was the evidence underlying the different initial complaints. They argue that, while the procedural schedule for the ABATE Complaint proceeding happened to result in the testimony filed by Complainants being based on the same time period used in the instant Complaint, the important fact is that Complainants' analysis demonstrates that financial conditions have changed since November 2013 such that the ROE for MISO TOs is unjust and unreasonable in February 2015.⁷⁴

⁷¹ *Id.* at 27.

⁷² Complainants Answer at 3-4 (citing *Southern Co. II*, 83 FERC ¶ 61,079 at 61,385-86; *Consumer Advocate I*, 67 FERC at 61,998-99; *Golden Spread Elec. Coop., Inc. v. S.W. Pub. Serv. Co.*, 147 FERC ¶ 61,239, at P 26 (2014)).

⁷³ *Id.* at 4-5 (citing *Seminole*, 149 FERC ¶ 61,210 at P 32 (citing *Consumer Advocate I*, 67 FERC at 62,000); *Southern Co. I*, 68 FERC ¶ 61,231, *order on reh'g*, 83 FERC ¶ 61,079; *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998) (*San Diego Gas & Elec.*), *reh'g denied*, 86 FERC ¶ 61,253 (1999), *reh'g denied*, 95 FERC ¶ 61,073 (2001)). *But see id.* (citing *EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,130 (2010) (rejecting the "pancaked" complaint, by distinguishing it from the complaints in *Consumer Advocate I*, *Southern Co. II*, and *San Diego Gas & Elec.*)).

⁷⁴ *Id.* at 5-6.

37. Complainants also disagree with MISO TOs' alleged deficiencies in Mr. Solomon's testimony. Complainants argue that MISO TOs' disagreement with Mr. Solomon's analysis does not render his analysis defective. Additionally, Complainants argue that some of the MISO TOs' assertions, such as their assertion that Mr. Solomon should not have excluded certain low-end DCF values and used Value Line and not IBES growth data, are inconsistent with Commission precedent.⁷⁵ Complainants also argue that Mr. Solomon did consider whether there were anomalous market conditions in determining where in the zone of reasonableness the ROE should be and had no need to consider alternative cost of capital models. They state that Mr. Solomon found that the current market conditions have been the case for an extended period, rendering them, by definition, not anomalous.⁷⁶ Accordingly, Complainants contend that Mr. Solomon relied on the Commission's methodology as outlined in Opinion Nos. 531 and 531-B and that they provided more than sufficient evidence to meet their prima facie burden to show that the MISO TOs' current ROE is unjust and unreasonable.

38. Complainants also contend that, contrary to arguments raised by MISO TOs in their answer, MISO TOs have not demonstrated that the current MISO-wide ROE is just and reasonable, but instead demonstrated that the current MISO-wide ROE should be set for investigation and reduction. Further, Complainants cite ongoing low bond yields and argue that MISO TOs failed to eliminate high-end outliers from their analysis.⁷⁷ Complainants also state that MISO TOs' arguments that the base ROE cannot be unjust and unreasonable because it falls in the zone of reasonableness are inconsistent with Commission precedent.⁷⁸

39. In their answer, Arkansas Electric Cooperative and Hoosier Cooperative argue that Xcel raises arguments in its answer that are beyond the scope of the instant proceeding and should be denied. Nevertheless, Arkansas Electric Cooperative and Hoosier Cooperative acknowledge that, while they are non-jurisdictional MISO transmission owners, they voluntarily commit to change their ROEs to whatever the

⁷⁵ *Id.* at 7-9 (citing Opinion No. 531, 147 FERC ¶ 61,234 at PP 13, 89, 102, 122-123, 142; Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 49, 71-72, 78).

⁷⁶ *Id.* at 9-10.

⁷⁷ *Id.* at 12-17.

⁷⁸ *Id.* at 17-18 (citing *Bangor Hydro*, 122 FERC ¶ 61,038 at P 10; *S. Cal. Edison Co. v. FERC*, 717 F.3d 177, 181 (D.C. Cir. 2013)).

outcome of this proceeding is,⁷⁹ and they intend to adopt that ROE as of the refund effective date established by the Commission in this proceeding, in order to maintain parity between themselves and MISO's public utility transmission owners with regard to ROE.⁸⁰

40. Arkansas Electric Cooperative and Hoosier Cooperative state that they are exempted from the FPA's definition of "public utility"⁸¹ and that, because the Complaint does not place at issue the ROEs embedded in the rates of Arkansas Electric Cooperative, Hoosier Cooperative, and other non-jurisdictional MISO transmission owners, those ROEs are beyond the scope of this proceeding.⁸² Arkansas Electric Cooperative and Hoosier Cooperative argue that Xcel cites no case where the Commission affirmatively expanded the issues before it to include not only the rates of public utility transmission owners, but also the rates of non-jurisdictional transmission owners, simply because the transmission owners were members of the same RTO.⁸³

41. Further, Arkansas Electric Cooperative and Hoosier Cooperative assert that the fact that rates of one or several of an RTO's transmission owners are found to be excessive does not require that the rates of all of the RTO's transmission owners be

⁷⁹ Complaint at 7 & n.1.

⁸⁰ Arkansas Electric Cooperative and Hoosier Cooperative Answer at 3, 11-12. Arkansas Electric Cooperative and Hoosier Cooperative state that, "[a]ssuming that parity is maintained with regard to the [RTO participation adder sought by Hoosier Cooperative in Docket No. ER15-1210-000], [they] will voluntarily provide refunds, from the refund effective date set in this docket, of the difference between what they collect under their current rates and what they would have collected had their rates reflected the just and reasonable ROE the Commission determines in this docket." They further state that Arkansas Electric Cooperative's commitment "assumes that it is granted comparable treatment should it seek in the future to implement a 50-basis adder for RTO membership." *Id.* at 3 n.7, 4.

⁸¹ *Id.* at 4 (citing 16 U.S.C. § 824(f) ("No provision in this subchapter shall apply to, or be deemed to include . . . an electric cooperative that receives financing under the Rural Electrification Act of 1936 . . . unless such provision makes specific reference thereto.")).

⁸² *Id.*

⁸³ *Id.* at 5-6.

revised, let alone revised on the same day.⁸⁴ Moreover, Arkansas Electric Cooperative and Hoosier Cooperative note that the Commission's refund authority pursuant to section 206 of the FPA requires the initiation of an action either through the filing of a complaint or upon the Commission's own initiative and, in this case, they state that the rates of non-jurisdictional transmission owners has not been put at issue pursuant to FPA section 206.⁸⁵ Arkansas Electric Cooperative and Hoosier Cooperative also argue that, while Xcel requests that the Commission impose a reduced ROE on Arkansas Electric Cooperative and Hoosier Cooperative, Xcel provides no factual support of any kind for this request. They assert that Xcel is even without standing to raise any issues regarding the transmission rates of Arkansas Electric Cooperative and Hoosier Cooperative because Xcel does not claim to take transmission service from either Arkansas Electric Cooperative or Hoosier Cooperative, or that it would otherwise be affected by any increase or decrease in their transmission rates.⁸⁶

42. Lastly, Arkansas Electric Cooperative and Hoosier Cooperative contend that Xcel's request that the Commission open section 206 proceedings against MISO's Tariff and require that MISO make a compliance filing to remove the tariff sheets of any non-jurisdictional transmission owner that did not voluntarily commit to making refunds as of the effective date established in this docket is without merit for similar reasons and should be denied.⁸⁷

IV. Discussion

A. Procedural Matters

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene given the interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁸⁴ *Id.* at 6-7.

⁸⁵ *Id.* at 7-9.

⁸⁶ *Id.* at 10.

⁸⁷ *Id.* at 10-11.

44. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

45. We find that the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing ordered below. Accordingly, we will set the Complaint for investigation and a trial-type, evidentiary hearing under section 206 of the FPA. With regard to the request for consolidation, we leave to the discretion of the Chief Administrative Law Judge whether it is appropriate to consolidate this proceeding and the ABATE Complaint proceeding in Docket No. EL14-12 for purposes of hearing and decision.⁸⁸

46. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,⁸⁹ we will set the refund effective date at the earliest date possible, i.e., February 12, 2015, as requested.

47. If the Chief Administrative Law Judge determines that it is appropriate to consolidate this proceeding with the ABATE Complaint proceeding in Docket No. EL14-12, the consolidated proceeding will involve multiple refund periods—the 15-month refund period in the instant proceeding and the 15-month refund period in Docket No. EL14-12-000. In those circumstances, it would be appropriate for the parties to litigate a separate ROE for each refund period. Specifically, for the refund period covered by the proceeding in Docket No. EL14-12-000 (i.e., November 12, 2013 through February 11, 2015), the ROE for that particular 15-month refund period should be based on the most recent financial data available during that period, i.e., the last

⁸⁸ See 18 C.F.R. § 385.503(a) (2014).

⁸⁹ See, e.g., *Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

six months of that period.⁹⁰ For the refund period in the instant docket (i.e., February 12, 2015 through May 11, 2016) and for the prospective period, the ROE should be based on the most recent financial data in the record.⁹¹

48. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or by June 30, 2016. Thus, we estimate that, absent settlement we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by May 31, 2017.

49. While MISO TOs and Xcel raise various arguments as to the propriety of allowing the Complaint, the Commission has previously allowed successive complaints when presented with a new analysis.⁹² In this case, Complainants have submitted a new, two-step DCF analysis for a new time period, with new, more current data. Regarding MISO TOs' and Xcel's assertions that the Complaint must be dismissed because Complainants have the opportunity to challenge the base ROE in the ABATE Complaint proceeding, the fact that the record in the ABATE Complaint proceeding is still open is irrelevant. Complainants were free to file a complaint requesting a rate decrease based on later common equity cost data without regard to the status of the ABATE Complaint

⁹⁰ See Opinion No. 531, 147 FERC ¶ 61,234 at P 160 (addressing the use of recent financial data to determine the ROE); see also *New York Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,176, at P 24 (2014).

⁹¹ See Opinion No. 531, 147 FERC ¶ 61,234 at PP 65-67, 160 (holding that a single ROE should be established for the most recent refund period addressed at the hearing and for the prospective period based on the most recent financial data in the record); see also *New York Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,176 at P 24.

⁹² *Consumer Advocate I*, 67 FERC at 62,000; *Southern Co. I*, 68 FERC ¶ 61,231, order on reh'g, 83 FERC ¶ 61,079; see also *San Diego Gas & Elec.*, 85 FERC ¶ 61,414 (1998), reh'g denied, 86 FERC ¶ 61,253 (1999), reh'g denied, 95 FERC ¶ 61,073 (2001). But see *EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, LLC*, 131 FERC ¶ 61,130 (2010), reh'g denied, 136 FERC ¶ 61,041 (2011) (rejecting the "pancaked" complaint, by distinguishing it from the complaints in *Consumer Advocate I*, *Southern Co. II*, and *San Diego Gas & Elec.*).

proceeding.⁹³ We likewise find unpersuasive MISO TOs' assertion that the Commission should dismiss the Complaint because the base ROE falls within the zone of reasonableness. The Commission has previously rejected the contention that every ROE within the zone of reasonableness is necessarily just and reasonable,⁹⁴ and we do so again here.

50. We find that Xcel's contention that the Commission must require Arkansas Electric Cooperative and Hoosier Cooperative to provide a voluntary commitment that they will provide refunds between the base ROE they currently collect and any reduction to the base ROE ordered by the Commission, effective as of the same refund effective date established by the Commission, is beyond the scope of this proceeding. The issues of the base ROE of non-jurisdictional MISO transmission owners and the refund obligations from non-jurisdictional MISO transmission owners are not before the Commission in this proceeding because they were not issues raised in the Complaint. We note, however, that Arkansas Electric Cooperative and Hoosier Cooperative acknowledge that, while they are non-jurisdictional MISO transmission owners, they voluntarily commit to change their ROEs to whatever the outcome of this proceeding is,⁹⁵ and they intend to adopt that ROE as of the refund effective date established by the Commission in this proceeding, in order to maintain parity between themselves and MISO's public utility transmission owners with regard to ROE.⁹⁶

⁹³ See *Consumer Advocate I*, 67 FERC at 62,000.

⁹⁴ See, e.g., *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at PP 10-15 (2008); Opinion No. 531, 147 FERC ¶ 61,234 at PP 51-55.

⁹⁵ Complaint at 7 & n.1.

⁹⁶ Arkansas Electric Cooperative and Hoosier Cooperative Answer at 3, 11-12. Arkansas Electric Cooperative and Hoosier Cooperative state that, "[a]ssuming that parity is maintained with regard to the [RTO participation adder sought by Hoosier Cooperative in Docket No. ER15-1210-000], [they] will voluntarily provide refunds, from the refund effective date set in this docket, of the difference between what they collect under their current rates and what they would have collected had their rates reflected the just and reasonable ROE the Commission determines in this docket." They further state that Arkansas Electric Cooperative's commitment "assumes that it is granted comparable treatment should it seek in the future to implement a 50-basis point adder for RTO membership." *Id.* at 3 n.7, 4.

On May 8, 2015, the Commission conditionally accepted requests by Hoosier Cooperative and Southern Illinois Power Cooperative (Southern Illinois) to implement

(continued ...)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning this Complaint.

(B) In the event that this proceeding is not consolidated with Docket No. EL14-12-000, a presiding judge, to be designated by the Chief Administrative Law Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

the RTO participation adder, subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow analysis, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis, as those may be determined in the ABATE Complaint proceeding in Docket No. EL14-12. *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,104 (2015). Further, the Commission conditioned its acceptance upon a voluntary commitment by Hoosier Cooperative and Southern Illinois to "(1) provide refunds, with interest at Commission refund interest rates, to the extent that the ROE or zone of reasonableness established in the [ABATE Complaint proceeding] when applied as of the effective date of the instant filing would result in a lower revenue requirement than that charged by Hoosier [Cooperative] and Southern Illinois, and (2) provide refunds, with interest at Commission refund interest rates, consistent with any refund effective date established in any other proceedings resulting in a new base ROE or a new zone of reasonableness for the MISO transmission owners' base ROE, to the extent that the ROE or zone of reasonableness established in such proceedings, when applied as of the refund effective date established in such proceedings, would result in a lower revenue requirement than that charged by Hoosier [Cooperative] and Southern Illinois, for as long as Hoosier [Cooperative] and Southern Illinois apply the Commission approved base ROE of the MISO transmission owners." *Id.* P 27.

(C) The refund effective date in Docket No. EL15-45-000, established pursuant to section 206(b) of the FPA, is February 12, 2015, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Motions to Intervene

Alliant Energy Corporate Services, Inc.

Ameren Services Company

Arkansas Cities⁹⁷

Association of Businesses Advocating Tariff Equity

Coalition of MISO Transmission Customers

Consumers Energy Company

DTE Electric Company

Duke-American Transmission Company, LLC and DATC Midwest Holdings, LLC

Great Lakes Utilities

Great River Energy

Illinois Industrial Energy Consumers

Indiana Industrial Energy Consumers, Inc.

Joint Consumer Advocates⁹⁸

⁹⁷ Arkansas Cities for purposes of this filing are: the Conway Corporation; the West Memphis Utilities Commission; the City of Osceola, Arkansas; the City of Benton, Arkansas; the North Little Rock Electric Department; and the City of Prescott, Arkansas.

⁹⁸ Joint Consumer Advocates for purposes of this filing are: Illinois Citizens Utility Board; Indiana Office of Utility Consumer Counselor; Iowa Office of Consumer Advocate; Michigan Citizens Against Rate Excess; Minnesota Department of Commerce; Missouri Office of Public Counsel; and Citizens Utility Board of Wisconsin.

Michigan Attorney General Bill Schuette

Michigan Public Power Agency

Michigan South Central Power Agency

Midcontinent MCN, LLC

Midwest Municipal Transmission Group

Midwest TDUs

Minnesota Large Industrial Group

Minnesota Municipal Power Agency

Missouri Joint Municipal Electric Utility Commission

NRG Companies⁹⁹

Southern Minnesota Municipal Power Agency

Southwestern Electric Cooperative, Inc.

Transource Energy, LLC

Wabash Valley Power Association, Inc.

Wisconsin Electric Power Company

Wisconsin Industrial Energy Group

Wisconsin Public Service Corporation

WPPI Energy

⁹⁹ NRG Companies for purposes of this filing are: NRG Power Marketing LLC and GenOn Energy Management, LLC.

Notices of Intervention

Arkansas Public Service Commission (Arkansas Commission)
Council of the City of New Orleans, Louisiana

Illinois Commerce Commission (Illinois Commission)

Mississippi Public Service Commission and Mississippi Public Utilities Staff

Missouri Public Service Commission (Missouri Commission)

Organization of MISO States

Motions to Intervene and Comments and/or Protests

South Mississippi Electric Power Association (South Mississippi Electric)

Resale Power Group of Iowa (Iowa Group)¹⁰⁰

Answers to Complaint

MISO TOs¹⁰¹ (Answer to Complaint)

¹⁰⁰ Iowa Group is: Amana Society Service Co.; Anita Municipal Utilities; City of Afton; City of Buffalo; City of Danville; City of West Liberty; Coggon Municipal Utilities; Dysart Municipal Utilities; Farmers Electric Cooperative-Kalona; Grand Junction Municipal Utilities; Hopkinton Municipal Utilities; La Porte City Utilities; Long Grove Municipal Electric Utilities; Mt. Pleasant Municipal Utilities; New London Municipal Utilities; Odgen Municipal Utilities; Sibley Municipal Utilities; State Center Municipal Utilities; Story City Municipal Electric Utility; Tipton Municipal Utilities; Traer Municipal Utilities; Vinton Municipal Electric Utility; and Whittemore Municipal Utilities.

¹⁰¹ MISO TOs joining in the motion to dismiss and answer are: ALLETE for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC (ATC); Cleco Power LLC; Duke Energy Corporation for Duke Energy Indiana; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company (ITC Transmission); ITC

(continued ...)

Xcel Energy Services, Inc. (Xcel) on behalf of its utility operating company affiliates Northern States Minnesota and Northern States Wisconsin

Other Motions

Iowa Utilities Board (Motion to Intervene)

Maryland Public Service Commission (Out-of-Time Motion to Intervene)

Other Answers

ABATE Complainants¹⁰² (March 11, 2015) (Answer in Support of Complaint Requesting Fast Track Processing and Answer in Support of Motion to Consolidate)

Complainants (March 26, 2015) (Motion for Leave to Respond on Behalf of Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, and Hoosier Energy Rural Electric Cooperative, Inc.)

Arkansas Electric Cooperative and Hoosier Cooperative (March 26, 2015) (Answer of Arkansas Electric Cooperative Corporation and Hoosier Energy Rural Electric Cooperative, Inc. to Answer of Xcel Energy Services, Inc.)

Midwest LLC; and Michigan Electric Transmission Company, LLC (METC); MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana; and Wolverine Power Supply Cooperative, Inc.

¹⁰² The ABATE Complainants for purposes of this filing are: Association of Businesses Advocating Tariff Equity; Coalition of MISO Transmission Customers; Illinois Industrial Energy Consumers; Indiana Industrial Energy Consumers, Inc.; Minnesota Large Industrial Group; and Wisconsin Industrial Energy Group.